



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800

Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director  
Thomas A. Faha  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
NUTLEY STREET SERVICE CENTER, LLC  
FOR  
NUTLEY STREET SERVICE CENTER  
Facility ID No. 3010017**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Nutley Street Service Center, LLC for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Facility" means the physical location where the UST and/or UST system is installed and/or operated, known as Nutley Street Service Station located at 9130 Lee Highway in Fairfax, Virginia. The Facility's UST and/or UST system are owned and operated by Nutley Street Service Center, LLC, and the Facility is further identified by UST Facility ID# 3010017.

5. "Financial Responsibility" means the ability to demonstrate that one has the financial resources available to pay for the costs of containment and cleanup and third party lawsuits in the event of a release from an UST or UST system.
6. "Form 7530-2" means the Notification for Underground Storage Tanks form used by DEQ to register and track USTs for proper operation, closure and ownership, in accordance with 9 VAC 25-580-70.
7. "Nutley" means Nutley Street Service Center, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Nutley Street Service Center is a "person" who owns the Facility.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Owner" means any person who owns an UST system used for storage, use, or dispensing of regulated substances as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
12. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.
13. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
14. "Regulated Substance" means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
15. "Regulations" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*
16. "Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 9 (Va. Code §§ 62.1-44.34:8 through 62.1-44.34:9) of the State Water Control Law addresses Storage Tanks.
18. "Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Nutley is the owner operator of the Facility. Nutley stores a regulated substance in the form of gasoline in USTs at the Facility.
2. On February 26, 2016, Department staff conducted a formal inspection of the Facility to evaluate Nutley's compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were three active 12,000 gallon gasoline USTs at the Facility. DEQ staff observed the following:
  - a. There was no evidence that tank release detection was being conducted on the UST systems. An email received on May 25, 2016, from the Facility operator indicates that the Monitoring System for the tanks (Interstitial Monitoring and Automatic Tank Gauging) was not working because the sensors were not operational. No alternate form of release detection results were provided to DEQ. Passing line leak detector testing and line tightness testing could also not be provided to DEQ at the time of the inspection. Testing was later conducted on March 21, 2016, and passing results were provided to DEQ on May 25, 2016.
3. 9 VAC 25-580-130 requires that owners and operators must provide a method, or combination of methods, of release detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains product.
4. 9 VAC 25-580-50.6 and 60.5 states that release detection shall be provided in accordance with Part IV (9 VAC 25-580-130 *et seq.*) of the Regulation.

5. 9 VAC 25-580-140 states that owners and operators of petroleum UST systems must provide release detection for tanks and piping in accordance with the requirements of that section.
6. 9 VAC 25-580-180 states that UST system owners and operators must maintain records in accordance with 9 VAC 25-580-120, including results of any sampling, testing or monitoring, for at least one year, either at the facility and immediately available for inspection or at a readily available alternative site and available for inspection upon request.
7. On June 23, 2016, the Department issued Warning Letter No. TNRO165076 to Nutley for violations listed in paragraphs C(1) through C(6), above.
8. On October 5, 2016, the Department issued Notice of Violation No. TNRO172856 to Nutley for violations listed in paragraphs C(1) through C(6), above.
9. On December 16, 2016, Department staff conducted a follow-up site visit of the Facility. DEQ staff observed that a new Veeder-Root monitoring system had been installed and was functional. The DEQ Inspector was informed that the Super gasoline line was shut-down following a failed line leak detector test. Valid tank release detection records have not been submitted to DEQ for any tank to date.
10. Based on the results of the February 26 and December 16, 2016, inspections of the Facility, the Board concludes that Nutley Service Center has violated 9 VAC 25-580-50.6 and 60.5, 9 VAC 25-580-130, 9 VAC 25-580-140, and 9 VAC 25-580-180, as described in paragraphs C(1) through C(6), above.
11. Representatives of Nutley submitted valid tank and piping release detection records to DEQ on June 8, 2017.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Nutley Street Service Center, LLC, and Nutley Street Service Center, LLC agrees to Pay a civil charge of \$3,851.40 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Nutley Street Service Center, LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Nutley Street Service Center, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Nutley Street Service Center, LLC for good cause shown by Nutley Street Service Center, LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Nutley Street Service Center, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Nutley Street Service Center, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Nutley Street Service Center, LLC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Nutley Street Service Center, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Nutley Street Service Center, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake,

flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Nutley Street Service Center, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Nutley Street Service Center, LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Nutley Street Service Center, LLC. Nevertheless, Nutley Street Service Center, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Nutley Street Service Center, LLC has completed all of the requirements of the Order;
  - b. Nutley Street Service Center, LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Nutley Street Service Center, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Nutley Street Service Center, LLC from its obligation to comply with any statute,

regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Nutley Street Service Center, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Nutley Street Service Center, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Nutley Street Service Center, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Nutley Street Service Center, LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Nutley Street Service Center, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8<sup>th</sup> day of September, 2017.



Thomas A Faha Northern Regional Director  
Department of Environmental Quality

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Nutley Street Service Center, LLC voluntarily agrees to the issuance of this Order.

Date: 7-7-17 By: [Signature], Secretary  
(Person) (Title)  
[Nutley Street Service Center, LLC]

Commonwealth of Virginia  
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 7 day of July, 20 17, by Pattara Chum Pa who is Secretary of Nutley Street Service Center, LLC, on behalf of the company.

[Signature]  
\_\_\_\_\_  
Notary Public  
7668749  
\_\_\_\_\_  
Registration No.

My commission expires: 5/31/20

Notary seal:

